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 Attorneys for Defendant  
 5 ENTERPRISE TRUST COMPANY  
 6  
 7  
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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 OAKLAND DIVISION

11 RUTHE P. GOMEZ,  
 12 Plaintiff,  
 13 vs.  
 14 TRADERIGHT CORP. d/b/a TRADERIGHT  
 15 SECURITIES, INC., ENTERPRISE TRUST  
 COMPANY, and LOCKE HAVEN, LLC,  
 16 Defendants.

Case No. C 08-00266 WDB

**NOTICE OF MOTION AND MOTION TO  
 WITHDRAW APPEARANCE**

Date: April 23, 2008  
 Time: 4:00 p.m.  
 Location: Courtroom 4, 3rd Floor  
 Judge: Hon. Wayne D. Brazil

18 NOTICE IS HEREBY GIVEN that on April 23, 2008 at 4:00 p.m., or as soon as the matter  
 19 may be heard, if necessary, in Courtroom 4 of the above-titled Court, 1301 Clay Street, Oakland,  
 20 California 94612, Howrey LLP hereby moves this Court pursuant to Local Rule 11-5 to allow it to  
 21 withdraw as counsel for Defendant Enterprise Trust Company, and to no longer participate in these  
 22 proceedings. This motion is based upon this Notice of Motion and Motion, the declarations supporting  
 23 this motion, the papers and pleadings of record in this case, and upon other matters as may be  
 24 presented to the Court if there is a hearing on this motion.

25 In support of this motion, Howrey LLP states as follows:

26 1. In late November 2007, Howrey was retained to represent jointly Defendant Enterprise  
 27 Trust Company (“Enterprise”), John H. Lohmeier, and Rebecca Townsend (collectively,  
 28 “Defendants”): in matters related to complaints by Ruthe Gomez and her company, Advisory Financial

1 Consultants, Inc. (AFC); matters related to a complaint then pending against Defendants in a Financial  
 2 Industry Regulatory Authority (FINRA) arbitration; matters related to the Securities and Exchange  
 3 Commission's (SEC) request for information; and matters related to investigations by the Illinois state  
 4 banking and insurance regulators (collectively, the "Matters"). (Declaration of Stephen D. Libowsky  
 5 In Support of Motion to Withdraw Appearance ("Libowsky Decl."), ¶ 2.) Howrey confirmed that it  
 6 was appropriate and desirable for the Defendants to be represented jointly by the same law firm, and  
 7 the Defendants agreed. (Id.)

8       2. On December 19, 2007, an action related to the Matters pending in other jurisdictions was  
 9 commenced in the Superior Court of the State of California in and for the County of Alameda, entitled  
 10 *Ruthe P. Gomez v. TradeRight Corp., Enterprise Trust Company, Locke Haven, LLC, and DOES 1*  
 11 *through 50, inclusive*, as Case Number RG07362098 ("California State Action"). (See Dkt No. 1.)  
 12 The Superior Court of the State of California in and for the County of Alameda issued on December  
 13 19, 2007, a Temporary Restraining Order and Order to Show Cause Re: Preliminary Injunction. (See  
 14 id.)

15       3. On January 15, 2008, the California State Action was removed to the United States District  
 16 Court for the Northern District of California. (Dkt. No. 1.) This Court filed on January 15, 2008 an  
 17 Order Setting Initial Case Management Conference and ADR Deadlines. (Dkt. No. 3.) The time for  
 18 filing Enterprise's and TradeRight Securities, Inc.'s responses to Plaintiff's Complaint has twice been  
 19 extended via stipulation of the parties granted by the Court. (Dkt. Nos. 6, 7, 10 & 11.) Responses are  
 20 currently due March 14, 2008. (Dkt. No. 11.)

21       4. Howrey received telephonic notice from the SEC on the afternoon of Monday, March 3,  
 22 2008, that a complaint was being filed against the Defendants in the United States District Court for  
 23 the Northern District of Illinois and that a temporary restraining order, an asset freeze and a receiver  
 24 were being sought on an expedited basis. Howrey attorneys participated in discussions with the SEC  
 25 and a telephonic hearing with Judge Kennelly held that afternoon which resulted in the agreed to  
 26 restraining and asset freeze orders. (Libowsky Decl., ¶ 3.) Over the next two days, Howrey attorneys  
 27 participated in the telephonic hearing with the United States District Court for the Northern District of  
 28 Illinois on Tuesday, March 4, 2008, participated in several discussions with the SEC, and were

1 physically present and participated in the evidentiary hearing on Wednesday, March 5, 2008. (Id.)  
 2 After that hearing, the United States District Court for the Northern District of Illinois entered a verbal  
 3 order appointing a Receiver. That order was memorialized in a written order dated March 6, 2008.  
 4 (Id.)

5       5. During the week of March 3, 2008, while dealing with the Matters, including those  
 6 occurring in United States District Court for the Northern District of Illinois, Howrey was involved in  
 7 discussions with the SEC and the appointed Receiver. (Id., ¶ 4.) Howrey had been involved for  
 8 several weeks in producing information and documents to the SEC and represented the individual  
 9 Defendants in deposition testimony before the SEC and FINRA. (Id.) During this time period,  
 10 Howrey believed that it was appropriate and desirable that the Defendants be represented by a single  
 11 law firm and represented the Defendants jointly. (Id.)

12       6. For the first time, on Friday, March 7, 2008, Howrey became aware that it could no longer  
 13 represent the Defendants jointly or any of them individually consistent with its professional  
 14 obligations. Howrey moves to withdraw as counsel for Defendant Enterprise Trust Company in this  
 15 case because Howrey's professional obligations prevent its representation of any Defendant  
 16 individually. (Id., ¶ 5.)

17       7. Howrey, after lengthy internal discussions with the appropriate individuals in the firm  
 18 responsible for analyzing professional responsibility issues, immediately informed John H. Lohmeier,  
 19 Rebecca Townsend, Enterprise, and the appointed Receiver, Phillip L. Stern, that it could no longer  
 20 represent the Defendants individually in the Matters or any of the related actions, including this case.  
 21 (Id., ¶ 6.)

22       8. On March 10, 2008, Howrey informed counsel for Plaintiff Ruthe P. Gomez in writing  
 23 concerning its withdrawal as counsel in the Matters pending in other jurisdictions. (Id., ¶ 7; Ex. 1.) On  
 24 March 13, 2008, Howrey informed counsel for Plaintiff Ruthe P. Gomez telephonically of its intent to  
 25 also withdraw in this particular case. (Declaration of Matthew F. Greinert In Support of Motion to  
 26 Withdraw Appearance ("Greinert Decl.", ¶ 2.)

27       9. Plaintiff Ruthe P. Gomez does not oppose this Motion for Withdrawal of Appearance.  
 28 (Greinert Decl., ¶ 3.)

1           10. Due to the present motion and a deadline of March 14, 2008 for Enterprise's and  
 2 TradeRight Securities, Inc.'s responses to Plaintiff's Complaint, the parties filed on March 13, 2008, a  
 3 Stipulation Extending Time to File Response to Complaint. The stipulation extends until March 28,  
 4 2008 Enterprise's and TradeRight Securities, Inc.'s time to respond to Plaintiff's Complaint to allow  
 5 Enterprise to obtain substitute counsel if it desires and if this motion is granted.

6           11. In its professional judgment, Howrey can no longer represent Enterprise further in this  
 7 matter. (Libowsky Decl., ¶ 8.) In light of the sensitivity of the issues related to this decision, Howrey  
 8 is not able, consistent with its professional obligations, to more fully articulate its judgment and the  
 9 reasons related to that judgment. (Id.) If the Court desires a more complete discussion of this  
 10 situation, Howrey will certainly do whatever it can to satisfy the Court, including an *in camera*  
 11 discussion of the situation.

12           12. At all times since informing Enterprise of its need to withdraw as counsel for this case,  
 13 Howrey has stated that it will do whatever it can appropriately do to transition the case to new counsel  
 14 and to protect the interests of Enterprise. Howrey has and will continue to do so. (Id., ¶ 9.)

15           13. Although this motion is not filed on an expedited basis, Howrey respectfully requests the  
 16 Court to consider granting this motion as soon as practicable to permit Enterprise sufficient time to  
 17 retain substitute counsel should it choose to do so.

18           WHEREFORE, Howrey LLP respectfully requests that this Court grant its motion to withdraw  
 19 from this matter.

20 Dated: March 14, 2008

Respectfully submitted,

HOWREY LLP

24 By: \_\_\_\_\_/s/

25 Benjamin K. Riley  
 Attorneys for Defendant  
 26 ENTERPRISE TRUST COMPANY

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

RUTHE P. GOMEZ,

Plaintiff,

vs.

TRADERIGHT CORP. d/b/a TRADERIGHT  
SECURITIES, INC., ENTERPRISE TRUST  
COMPANY, and LOCKE HAVEN, LLC,

Defendants.

Case No. C 08-00266 WDB

**[PROPOSED] ORDER GRANTING  
MOTION TO WITHDRAW APPEARANCE**

This matter comes before the Court on Howrey LLP's (including its attorneys Benjamin K. Riley, Stephen D. Libowsky, and Helen C. MacLeod) motion to withdraw as counsel for Defendant Enterprise Trust Company. The Court, having reviewed and considered the Motion, facts set forth therein, and supporting declarations, hereby GRANTS the Motion.

IT IS SO ORDERED.

Dated: \_\_\_\_\_

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The Honorable Wayne D. Brazil  
United States Magistrate Judge

1 Benjamin K. Riley (SBN 112007)  
2 HOWREY LLP  
3 525 Market Street, Suite 3600  
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5 Attorneys for Defendant  
ENTERPRISE TRUST COMPANY  
6  
7

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9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 OAKLAND DIVISION

12 RUTHE P. GOMEZ,

13 Plaintiff,  
vs.  
14

15 TRADERIGHT CORP. d/b/a TRADERIGHT  
SECURITIES, INC., ENTERPRISE TRUST  
COMPANY, and LOCKE HAVEN, LLC,

16 Defendants.  
17

Case No. C 08-00266 WDB

**DECLARATION OF MATTHEW F.  
GREINERT IN SUPPORT OF MOTION TO  
WITHDRAW APPEARANCE**

Date: April 23, 2008  
Time: 4:00 p.m.  
Location: Courtroom 4, 3rd Floor  
Judge: Hon. Wayne D. Brazil

18 I, Matthew F. Greinert, declare:

19 1. I am an attorney at the law firm of Howrey LLP, counsel of record for Enterprise Trust  
20 Company in the above-captioned action. I am a member in good standing of the State Bar of  
21 California and have been admitted to practice before this Court. I have personal knowledge of the  
22 facts set forth in this Declaration and, if called as a witness, could and would testify competently to  
23 such facts under oath.

24 2. On March 13, 2008, I spoke via telephone with Patrick Baldwin and Christopher Mader,  
25 counsel for Plaintiff Ruthe P. Gomez, to confirm Howrey's intent to withdraw as counsel from the  
26 action pending in this Court.  
27  
28

3. Mr. Baldwin stated that he would not oppose the Motion for Withdrawal of  
Appearance.

Executed at San Francisco, California on March 14, 2008.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

~~Matthew F. Greinert~~

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 3 Telephone: (415) 848-4900  
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4  
 Attorneys for Defendant  
 5 ENTERPRISE TRUST COMPANY

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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 OAKLAND DIVISION

11 RUTHE P. GOMEZ,

12 Plaintiff,

13 vs.

14 TRADERIGHT CORP. d/b/a TRADERIGHT  
 15 SECURITIES, INC., ENTERPRISE TRUST  
 COMPANY, and LOCKE HAVEN, LLC,

16 Defendants.

17 Case No. C 08-00266 WDB

**DECLARATION OF STEPHEN D.  
 LIBOWSKY IN SUPPORT OF MOTION TO  
 WITHDRAW APPEARANCE**

Date: April 23, 2008

Time: 4:00 p.m.

Location: Courtroom 4, 3rd Floor

Judge: Hon. Wayne D. Brazil

18 I, Stephen D. Libowsky, declare:

19 1. I am an attorney at law, admitted to practice law in the States of Georgia and Illinois,  
 20 and a partner in the law firm of Howrey LLP. I am counsel for Defendant Enterprise Trust Company.  
 21 I have personal knowledge of the facts contained in this declaration, and if called upon to do so, I  
 22 could and would testify competently thereto.

23 2. In late November 2007, Howrey was retained to represent jointly Defendant Enterprise  
 24 Trust Company (“Enterprise”), John H. Lohmeier, and Rebecca Townsend (collectively,  
 25 “Defendants”): in matters related to complaints by Ruthe Gomez and her company, Advisory Financial  
 26 Consultants, Inc. (AFC); matters related to a complaint then pending against Defendants in a Financial  
 27 Industry Regulatory Authority (FINRA) arbitration; matters related to the Securities and Exchange  
 28

1 Commission's (SEC) request for information; and matters related to investigations by the Illinois state  
2 banking and insurance regulators (collectively, the "Matters"). Howrey confirmed that it was  
3 appropriate and desirable for the Defendants to be represented jointly by the same law firm, and the  
4 Defendants agreed.

5       3.      Howrey received telephonic notice from the SEC on the afternoon of Monday, March 3,  
6 2008, that a complaint was being filed against the Defendants in the United States District Court for  
7 the Northern District of Illinois and that a temporary restraining order, an asset freeze and a receiver  
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9 and a telephonic hearing with Judge Kennelly held that afternoon which resulted in the agreed to  
10 restraining and asset freeze orders. Over the next two days, Howrey attorneys participated in the  
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12 Tuesday, March 4, 2008, participated in several discussions with the SEC, and were physically present  
13 and participated in the evidentiary hearing on Wednesday, March 5, 2008. After that hearing, the  
14 United States District Court for the Northern District of Illinois entered a verbal order appointing a  
15 Receiver. That order was memorialized in a written order dated March 6, 2008.

16       4.      During the week of March 3, 2008, while dealing with the Matters, including those  
17 occurring in United States District Court for the Northern District of Illinois, Howrey was involved in  
18 discussions with the SEC and the appointed Receiver. Howrey had been involved for several weeks in  
19 producing information and documents to the SEC and represented the individual Defendants in  
20 deposition testimony before the SEC and FINRA. During this time period, Howrey believed that it  
21 was appropriate and desirable that the Defendants be represented by a single law firm and represented  
22 the Defendants jointly.

23       5.      For the first time, on Friday, March 7, 2008, Howrey became aware that it could no  
24 longer represent the Defendants jointly or any of them individually consistent with its professional  
25 obligations. Howrey moves to withdraw as counsel for Defendant Enterprise Trust Company in this  
26 case because Howrey's professional obligations prevent its representation of any Defendant  
27 individually.

28

1       6. After lengthy internal discussions with the appropriate individuals in the firm  
2 responsible for analyzing professional responsibility issues, I immediately informed John H. Lohmeier,  
3 Rebecca Townsend, Enterprise, and the appointed Receiver, Phillip L. Stern, that it could no longer  
4 represent the Defendants individually in the Matters or any of the related actions, including this case.

5       7. On March 10, 2008, I informed counsel for Plaintiff Ruthe P. Gomez in writing  
6 concerning Howrey's withdrawal as counsel in the Matters pending in other jurisdictions.

7        8.        In its professional judgment, Howrey can no longer represent Enterprise further in this  
8 matter. In light of the sensitivity of the issues related to this decision, Howrey is not able, consistent  
9 with its professional obligations, to more fully articulate its judgment and the reasons related to that  
10 judgment.

11        9.        At all times since informing Enterprise of its need to withdraw as counsel for this case,  
12 Howrey has stated that it will do whatever it can appropriately do to transition the case to new counsel  
13 and to protect the interests of Enterprise. Howrey has and will continue to do so.

Executed at Chicago, Illinois, on March 14, 2008.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



Stephen D. Libowsky



321 North Clark Street  
Suite 3400  
Chicago, IL 60610  
[www.howrey.com](http://www.howrey.com)

March 10, 2008

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**Stephen D. Libowsky**  
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**Re: *Enterprise Trust Company***

Ladies and Gentlemen:

This letter hereby informs you that our firm is no longer representing Enterprise Trust Company, John Lohmeier or Rebecca Townsend. We will orderly wind down and transition these matters.

AMSTERDAM BRUSSELS CHICAGO EAST PALO ALTO HOUSTON IRVINE LONDON LOS ANGELES  
MADRID MUNICH NEW YORK NORTHERN VIRGINIA PARIS SALT LAKE CITY SAN FRANCISCO TAIPEI WASHINGTON, DC

# **HOWREY**

Philip L. Stern, Esq.  
Mr. Paul Ashworth  
Ms. Bernadette Cole  
Patrick Baldwin, Esq.  
Ms. Laura D. McNamire  
Mr. Steven J. Levine

Please call me if you have any questions.

Very truly yours,

  
Stephen D. Libowsky

*Glory*

SDL:clr

cc (by Email & Federal Express): John Lohmeier  
Rebecca Townsend

## **PROOF OF SERVICE**

4 STATE OF CALIFORNIA )  
5 COUNTY OF SAN FRANCISCO ) ss.:

I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to the within action. My business address is 525 Market Street, Suite 3600, San Francisco, California 94105.

On March 14, 2008, I served on the interested parties in said action the within:

## Motion to Withdraw Appearance

**Declaration of Stephen D. Libowsky In Support of Motion to Withdraw Appearance**

Declaration of Matthew F. Greinert In Support of Motion to Withdraw Appearance

[Proposed] Order Granting Motion to Withdraw Appearance

by placing a true copy thereof in a sealed envelope(s) addressed as stated on the attached mailing list and causing such envelope(s) to be deposited at San Francisco, California.

- (OVERNIGHT DELIVERY) by depositing in a box or other facility regularly maintained by Federal Express, an express service carrier, or delivering to a courier or driver authorized by said express service carrier to receive documents, a true copy of the foregoing document in sealed envelopes or packages designated by the express service carrier, addressed as stated on the attached mailing list, with fees for overnight delivery paid or provided for and causing such envelope(s) to be delivered by said express service carrier.

(EMAIL/ELECTRONIC TRANSMISSION) Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable time after the submission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury that I am employed in the office of a member of the bar of this Court at whose direction the service was made and that the foregoing is true and correct.

Executed on March 14, 2008, at San Francisco, California.

Karol Tobar  
(Type or print name)

(Signature)

## **SERVICE LIST**

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